

ORDINANCE 2017-06

OF THE CITY OF FAIR OAKS RANCH CITY COUNCIL APPROVING AN EXCLUSIVE FRANCHISE AGREEMENT WITH REPUBLIC SERVICES FOR THE COLLECTION, HAULING, AND DISPOSAL OF RESIDENTIAL GARBAGE AND REFUSE WASTE IN THE CITY OF FAIR OAKS RANCH, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, PROVIDING A SEVERABILITY AND A REPEALER CLAUSE, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Fair Oaks Ranch has determined that it would be in the best interest of the citizens of the City and, would promote the health, safety and general welfare of the inhabitants of said City to contract with Republic Services to provide for the collection, removal and disposal of garbage and refuse waste in the City of Fair Oaks Ranch; and,

WHEREAS, the City Council of the City of Fair Oaks Ranch has determined that such an Agreement is necessary to preserve or protect the public health of the citizens of Fair Oaks Ranch, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS THAT:

SECTION I. AGREEMENT APPROVED.

The "*Exclusive Franchise Agreement for the Collection, Hauling and Disposal of Residential Garbage and Refuse Waste in the City of Fair Oaks Ranch, Texas*" (hereinafter the "Agreement"), attached hereto, upon execution, as **Exhibit "A"** and incorporated herein for all purposes, is hereby approved.

SECTION II. CITY MANAGER AUTHORIZED.

The City Manager is hereby authorized, on behalf of the City, to execute the Agreement in substantial form as **Exhibit "A"**, and such other ancillary instruments and documents as may be reasonably necessary to effectuate the intent of this Ordinance.

SECTION III. SEVERABILITY.

If for any reason any section, paragraph, subsection, clause, phrase, word, or provision of this Ordinance shall be held invalid or unconstitutional by final judgment of a Court of competent jurisdiction it shall not affect any other section, paragraph, subsection, clause, phrase, word or provision of this Ordinance, for it is the definite intent of this City Council that every section, paragraph, subsection, clause, phrase, word, or provision hereof be given full force and effect for its purpose.

SECTION IV. REPEAL.

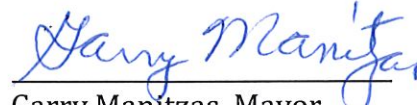
All ordinances or parts of ordinances in conflict with the terms of this ordinance are hereby repealed.

SECTION V. EFFECTIVE DATE.

This ordinance shall be effective upon passage, approval, and adoption.

PASSED on first reading this 3rd day of August, 2017.

PASSED, APPROVED and ADOPTED on second reading this the 17th day of August, 2017.


Garry Manitzas, Mayor

Attest:


Christina Picioccio, City Secretary

Approved as to Form:

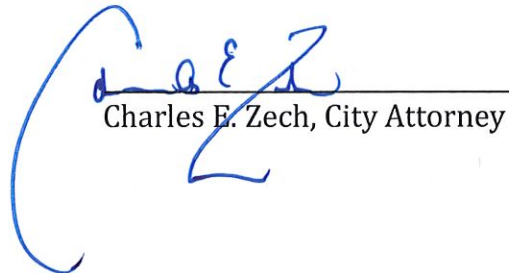

Charles E. Zech, City Attorney

Exhibit A

EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF RESIDENTIAL GARBAGE AND REFUSE WASTE IN THE CITY OF FAIR OAKS RANCH, TEXAS

STATE OF TEXAS

COUNTY OF KENDALL

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of August 17, 2017, by and between BFI Waste Services of Texas, LP, d/b/a Allied Waste Services of San Antonio//Republic Services of San Antonio (the "Contractor"), and the City of Fair Oaks Ranch, Texas (the "City").

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Contractor the exclusive franchise, license and privilege to collect, haul and dispose of Residential Garbage and Refuse, Brush and Bulky items, Wastewater Sludge and Screenings (as such terms are defined herein individually and collectively referred to a "Municipal Solid Waste") within the City's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Contractor and the City hereby agree as follows:

SECTION 1. EXCLUSIVE FRANCHISE GRANT.

The City hereby grants to the Contractor, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste over, upon, along and across the City's present and future streets, alleys, bridges and public properties.

SECTION 2. TERM OF AGREEMENT.

The term of this Agreement shall be for a period of five (5) years, commencing on October 1, 2017 and concluding on September 30, 2022.

The City, at its sole discretion, shall have the option to renew this Agreement for up to two (2) additional two (2) year terms. There is no guarantee to the Contractor that the City will exercise this option to continue this Agreement beyond the initial five year period. Both parties, in writing, shall agree to each extension.

SECTION 3. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Brush And Bulky Items - Brush includes personally-trimmed and severed parts of all domestically cultivated trees and shrubbery. Above average disposal of brush should be taken into consideration as historically, up to 600 tons, per event has been picked up. Bulky items consist of household items such

as large appliances with Freon removed, household fixtures, furniture, yard equipment with gas removed, mattresses, etc. Items have no size or weight limitations but are limited to residential and domestic items. Does not include commercial construction waste, remodeling materials or demolition debris.

Brush And Bulky Items Curbside Pick Up - The collection and disposal of curbside Brush and Bulky items.

Business Day - Any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City.

City - The City of Fair Oaks Ranch, Texas.

City Facilities - All municipal-owned buildings located at 7286 Dietz Elkhorn (City Hall Complex), 30955 Meadow Creek Trail (Fire Station), 7895 Fair Oaks Parkway (Fire Station), and the Wastewater Treatment Plant off of No Le Hace Road.

City Manager - The Fair Oaks Ranch City Manager or his/her authorized designee.

Commercial Container - Metal receptacle designed to be lifted and emptied mechanically for use at City Facilities.

Contractor - The person, corporation, partnership, or legal entity performing the services provided for under this Agreement.

Contractor's Public Education Program - A Program, maintained by the Contractor, that provides information of materials to be collected, a list of materials that cannot be collected or items which will require a special fee based pick-up, and how to prepare materials for the Residential and Garbage and Refuse services as well as annual brush/bulky item pick up and household hazardous waste events.

Dead Animal Collection - The collection of dead animals stored in the City's storage cooler.

Disposal Site - A legally permitted municipal solid waste depository including, but not limited to, sanitary landfills permitted or approved by all appropriate governmental agencies having jurisdiction and requiring such licenses, franchises, permits or approvals to receive for processing or final disposal municipal solid waste and dead animals.

Franchise Agreement - An agreement granting the right and responsibility to provide the Scope of Services provided for within the RFP.

Hazardous Waste – Means waste defined as, or of a character or in sufficient quantity to be defined as, a Hazardous Waste by the Resource Conservation and Recovery Act, as amended, or by Texas law with respect thereto, or a "toxic substance" as defined in the Toxic Substance Control Act, as amended, or any regulations with respect thereto, or any reportable quantity of a "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any regulations with respect thereto. The term "Hazardous Waste" also includes any waste whose storage, treatment, incineration or disposal requires a special license or permit from a Federal or Texas entity, body or agency.

Holidays - The following days shall be considered Holidays - New Year's Day, Thanksgiving Day, and Christmas Day.

Household Hazardous Waste - Household Hazardous Waste shall mean any liquid or solid waste identified or listed as a hazardous waste by the United States Environmental Protection Agency (EPA) pursuant to the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and as may be identified by any state or federal agency as hazardous or toxic and requiring special handling or special disposal treatment. EPA considers some leftover household products that can catch fire, react, or explode under certain circumstances, or that are corrosive or toxic as household hazardous waste. Products, such as paints, cleaners, oils, batteries, and pesticides can contain hazardous ingredients and require special care when disposed of.

Landfill - Any facility or area of land receiving Municipal Solid Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas.

Monthly Residential Rate - Monthly fee charged by the Contractor to all single-family residential receiving solid waste collection, disposal and recycling services authorized by City Council.

Recycling and Recycling Facility- Recycling shall mean a process by which recyclable materials are collected, sorted, processed, or prepared into marketable commodities for manufacturing into new products. Recycling Facility shall mean a facility where recyclable materials are sorted and processed.

Recycling Collection - Weekly residential curbside and City facilities collection of recyclable materials.

Recycling Materials - Recycling Materials includes, but not limited to the following:

Paper Products - Newspaper, magazines, ad circulars, catalogs, envelopes, file folders, flattened cardboard, paper bags, phone books.

Glass - Bottles and jars with labels and lids.

Cans - Empty aluminum and steel/tin cans used for beverages and food.

Rigid Plastic Containers - Household plastic containers labeled #1-7 with recycling symbol on the bottom of container. Labels and lids may be present.

Other: As detailed, in the proposal, by the Contractor such as foil, styrofoam, etc.

Recycling Materials not allowed includes mirrors, window, ceramic or other glass or glazed materials, and scrap metal.

Residential Containers - A 96-gallon wheeled container made of rigid plastic and provided by the Contractor.

Residential Garbage And Refuse - All dry trash, rags, kitchen and household wastes, food containers, lawn trimmings, leaves and other materials typically generated by a residential dwelling unit, which waste is treated by regulation as domestic municipal solid waste. Residential garbage and refuse does not include Unacceptable Waste.

Residential Unit - Garbage collection and recyclable material collection services to single-family, residential units will be billed directly by the Contractor. These types of residences include, but may not

be limited to, single family residences on one electric meter or duplex dwelling units on one or more meters.

Roll-Off Container - An open top dumpster characterized by a rectangular footprint, utilizing wheels to facilitate rolling the dumpster in place. Container is designed to be transported by special roll-off trucks.

Screenings - That floating and suspended matter, both organic and inorganic, that is removed from the wastewater entering the treatment plant by the mechanically cleaned coarse screens.

Special Waste - Special Waste is any nonhazardous solid waste at City locations which, because of its physical characteristics, chemical make-up, or biological nature requires either special handling, disposal procedures including liquids for solidification at the landfill, documentation, and/or regulatory authorization, or poses an unusual threat to human health, equipment, property, or the environment. Special Waste includes, but is not limited, to sludge from the City's wastewater treatment plants. Special Waste must conform in all respects with a Contractor-approved Special Waste Profile.

Special Waste Profile - Contractor's form of documentation, as provided in Attachment A, that the City must complete, and Contractor must approve, with respect to any Special Waste prior to Contractor's acceptance of such Special Waste.

Storm Damage - Storm damage refers to damage and debris produced by strong winds, rain, hail, lightning, flooding, storm, tornadoes or turbulent weather that ultimately will be identified at the City Manager's discretion.

Unacceptable Waste - Means highly flammable substances, Hazardous Waste, liquid wastes, certain pathological and biological wastes, explosives, toxic materials, radioactive materials, material that the disposal facility is not authorized to receive and/or dispose of, and other materials deemed by Texas or federal law, to be dangerous or threatening to health or the environment, or which cannot be legally accepted at the applicable disposal facility. Household Hazardous Waste collected during the designated and approved, once-per-year event by Contractor does not constitute Unacceptable Waste.

Waste - Means non-hazardous residential garbage and refuse, recyclable materials, and non-hazardous special waste. Waste does not include unacceptable waste.

Wastewater Sludge - The accumulated solids separated from the wastewater during processing. That portion of settled solids from the final clarifiers removed from the wastewater treatment processes to the solids drying beds or other solids handling facilities.

SECTION 4. OPERATIONS.

Scope of Service and Operations. It is expressly understood and agreed that the Contractor will provide the following services (the "Services"):

1. Weekly Collection. Unless defined a Holiday under this Franchise Agreement Contractor shall provide the following Weekly collection:
 - a. Residential Units - Contractor shall provide one curbside Residential Garbage and Refuse collection and one curbside Recycling Material collection per week, for each of

the residential units located within the City of Fair Oaks Ranch. The Recyclable Material curbside collection will occur on the same day as normal curbside Residential Garbage and Refuse collection. Such collection services must be provided between the hours of 7:00 A.M. and 7:00 P.M.

b. City Facilities – Contractor shall provide collection during the hours of 8:00 A.M. and 4:30 P.M. for each of the following locations as follows:

1) City Hall Complex – collected in 96-gallon and five-yard commercial containers at a frequency of once (1) per week and collected by the Contractor on a day as the weekly collection of residential units.

2) Fire Stations – collected in 96-gallon containers at a frequency of once (1) per week and collected by the Contractor on a day as the weekly collection of residential units

3) Wastewater Treatment Plant – collected in 96-gallon containers and 20 and 30-yard Roll-Off Containers at a frequency of twice (2) per week and collected by the Contractor on days as the weekly collection of residential units.

2. Containers.

a. Residential Containers - Contractor shall provide one Residential Container each for:

1) Residential Garbage and Refuse; and

2) Recycling Materials to each residential unit. Preferred colors for containers are green and brown.

b. Commercial Containers – At a minimum, Contractor shall provide the following commercial containers to the following City Facilities:

1) City Hall Complex – one (1) 5-yard metal receptacle designed to be lifted and emptied mechanically and ten (10) 96-gallon wheeled containers made of rigid plastic

2) Fire Stations – one (1) 96-gallon wheeled container made of rigid plastic at each location.

3) Wastewater Treatment Plant – one (1) 20- and one (1) 30-yard Roll-Off Container, and four (4) 96-gallon wheeled containers made of rigid plastic.

3. Recycling Education Program. Participation in curbside Recycling Collection shall be voluntary on the part of the resident. To promote maximum participation, Contractor shall, at the contract proposal price, implement, maintain and manage a public education program. Contractor shall provide educational material on acceptable recycling materials. The educational material, at the minimum, shall be sent once a calendar year in customer billing statements.

Contractor shall produce resident education tags, the form of which to be approved by the City Manager, to be left by Contractor if non-recyclable material is rejected.

Publishing and distribution of public education information shall be in hard copy and electronic version for use on City's website. The information shall contain a list of materials to be collected, a list of materials that cannot be collected or items which will require a special fee based pick up, and how to prepare materials for the weekly residential solid waste and recycling service. Said information shall be provided to every new customer, after the initial distribution, and shall be sent to all customers after any changes in collection procedures.

4. Curbside Brush and Bulky Item collections twice per calendar year, preferably February and August, to be coordinated and scheduled through the City Manager. During the collection period, all items of non-hazardous waste placed out along the City's right of way shall be picked up. Contractor is responsible for an advance notice on customer procedures of collection that shall be mailed to each residential unit. Announcements of the pick-up service shall be mailed in appropriate time to allow customers one week to place items out prior to start of pickup service in their zone. At least four zones should be utilized.

5. Dead Animal Collection at city-owned storage cooler located at 7286 Dietz Elkhorn on each day the Contractor provides residential solid waste pick up in the City.

6. Christmas Tree collection on a date to be determined annually by Contractor and City Manager but no later than mid-January of each calendar year.

7. Storm Damage clean up and disposal on City property within 48 hours of written request made by the City Manager.

8. Wastewater Sludge and Screenings removal and disposal:

a. Wastewater Sludge – Collected in a 30-yard Roll-Off Container at a frequency of twice (2) per week.

b. Screenings - Collected in four (4) 96-gallon wheeled, drainable, plastic waste wheelers at a frequency of twice (2) per week.

9. One scheduled Household Hazardous Waste collection event per calendar year.

10. Recycling Materials shall be disposed of at *400 Probandt, San Antonio, TX*. Contractor may change the location of the Recycling Facility, however, must receive written approval from the City, such approval not to be unreasonably withheld.

11. Residential Garbage and Refuse shall be disposed of at a Landfill.

12. Special Waste Profile If services include Special Waste, the City shall utilize Contractor's approved Special Waste Profile, signed by the City Engineer or an authorized City official who is responsible for environmental compliance, containing a complete and accurate description of the waste stream, including the generating process and chemical and physical characteristics.

a. Upon successful conclusion of the waste characterization approval process, the City shall thereafter update the Special Waste Profile (1) upon request of Contractor or (2) immediately upon any change in the composition, generating process or characteristics of the waste. The City agrees, upon written request of Contractor, to provide a Special Waste Profile or, in Contractor's discretion, a representative sample and full analytical characterization of any Waste Material to Contractor or others in connection with the proper management of the Special Waste.

b. The City warrants that it has sufficient knowledge and information to ensure that the Special Waste Profile provided is true and correct at the time of tender of every load of Special Waste and that each load of Special Waste tendered for management by contractor (1) shall be fully and precisely described in a Special Waste Profile; (2) shall conform to the information provided in the Special Waste Profile; and (3) shall not contain any hazardous waste or Unacceptable Waste.

c. The City will use best efforts and will provide information to the best of its knowledge but does not assume liability in case of error.

13. Right of Refusal. Contractor may, in its sole discretion, reject any Unacceptable Waste. If Unacceptable Waste is discovered before it is collected by Contractor, Contractor may refuse to collect the entire container of waste.

14. Contractor shall be required to follow all applicable local, state and federal laws and regulation pertaining to the provision of the services detailed herein, including but not limited to those related to safety. Contractor shall acquire title to Waste when the Waste is loaded into Contractor's vehicle; except when Contractor is providing disposal services only and not collection services, Contractor shall acquire title when the Waste is delivered to Contractor's premises. Title to and liability for any Unacceptable Waste shall at no time pass to Contractor.

SECTION 5. RATES AND FEES.

The rates and fees to be charged and received by the Contractor are as follows:

1. Total Monthly Residential Rate including annual Household Hazardous Waste event inclusive of disposal costs for solid waste services to include collection and disposal of Residential Garbage and Refuse, Brush and Bulky items, and Wastewater Sludge and Screenings, Recycling Materials, and Household Hazardous Waste. **\$20.05/home/month**

2. Total Monthly Rate for Additional Containers. **\$12.00/container/month**

3. Contractor may increase the rates effective on each anniversary of the effective date of the contract in an amount equal to the percentage increases in the Consumer Price Index for All Urban Consumers (Water, Sewer and Trash Collection Services) U.S. City Average, as published by the United States Department of Labor, Bureau of Statistics (the "CPI"). Rates will be increased using the most recently available trailing 12 months average CPI compared to the 12 months preceding. The Annual Rate Adjustment will be the lesser of the CPI Water, Sewer & Trash index or 3%. For example, if the CPI price increase is scheduled for April 1, 2017, and the latest CPI index available is the month of February, 2017, the CPI price increase percentage would be computed as the % change from:

The average CPI for the 12 months - March 2016 through February, 2017
Against the average CPI for the 12 months - March 2015 through February, 2016

SECTION 6. FRANCHISE FEE.

In consideration of the grant of the franchise herein the Contractor shall agree to:

1. Pay the City an amount equal to three (3%) percent of the gross receipts of the Contractor for Residential Unit services provided in the City. Said amount shall be paid each annual quarter, within thirty days after the quarter.
2. Pay to the City an amount equal to 50% of the net proceeds from the sale of all Recyclable Material collected from participants in the recycling program. Said amount shall be paid to the City each annual quarter, within thirty days after the quarter.
3. Notwithstanding the terms of this Agreement or any other understanding between the parties, Contractor's Franchise Fee obligations shall extend only to those revenues received and retained by Contractor as its rates or fees for servicing customers, as such rates or fees may be increased from time to time. To the extent Contractor imposes any surcharges on customers, including but not limited to surcharges made for the purpose of satisfying (i) Contractor's own Franchise Fee obligations to the City or (ii) Contractor's sales tax obligations or (iii) the Fuel Recovery Fee, Environmental Recovery Fee, Administrative Fee, or any other separately stated fee, to the extent applicable, the monies received by Contractor as a result of such surcharge(s) shall not be subject to the Franchise Fee and the City shall not be entitled to receive as part of its Franchise Fee any portion or percentage of such monies.
4. Contractor shall make available to City any and all documents and books necessary and related to the services provided under the Agreement upon reasonable notice, at any time during business hours for purpose of audit and verification of the fees to be paid hereunder.

SECTION 7. BILLING.

Contractor shall bill and collect, in accordance with the monthly fee schedule established herein, from all residential units within the contracted service area. City will not be responsible for, and will not provide assistance with collection of delinquent accounts.

SECTION 8. HOURS OF SERVICE.

For all the Services provided hereunder, the Contractor's hours of service shall be as provided for in this Agreement. The Contractor will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Contractor shall provide such services on the immediately following business day.

SECTION 9. CUSTOMER SERVICE.

A customer service office for billing, arrangement of services, and receipt of complaints shall be available during normal business hours to respond to customer and city inquiries within two (2) hours of the initial call. Contractor shall, on billing statements, provide the Contractor's customer service phone number. A 24 hour emergency telephone number with a representative available to respond to emergency calls from the City shall be made available.

SECTION 10. VEHICLES AND EQUIPMENT.

Contractor furnished-equipment, such as trash or recycling containers; dumpsters; or open to roll offs, shall remain as Contractor's property. The City and residents shall be liable for loss or damage to such equipment (except for normal wear and tear and for loss or damage resulting from Contractor's handling of the equipment). The City and residents shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move or alter the equipment. The City and residents shall provide safe, unobstructed access to the equipment on the scheduled collection day. Contractor may charge an additional fee for any additional collection service required by the failure to provide access.

Contractor shall provide and maintain a fleet of solid waste collection vehicles sufficient in number and capacity to perform the work and render the service required under this Agreement. All equipment, including collection vehicles shall be kept clean and in good condition and repair at all times. The trucks used in the collection of garbage shall be all metal, with completely enclosed "packer" type bodies that are designed and manufactured for the collection of garbage and rubbish. Said collection vehicles shall have Contractor's name and telephone numbers painted on each side of the vehicle.

Collection vehicles shall carry at all times a shovel and a broom or rake, to be used for collection of spilled refuse. Vehicles shall be equipped with two-way communications for constant contact, during operations, with the local office of the company.

Vehicles used by the Contractor for the collection, hauling and disposal of Residential Garbage and Refuse and Construction and Demolition Waste shall be protected at all times while in transit to prevent the blowing or scattering of Residential Garbage and Refuse and Recycling Materials onto the City's public streets, or properties adjacent thereto. All collection vehicles used by the Contractor shall be washed and deodorized once per week.

SECTION 11. INSURANCE COVERAGE.

Workers Compensation Insurance/Other State-approved Program: Contractor shall carry and maintain during the term of this Agreement, workers compensation or other state-approved program and employers liability insurance meeting the requirements of the State of Texas on all the Contractor's employees carrying out the work involved in this contract.

General Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$2,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$2,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Contractor or its employees carrying out the work involved in this Agreement.

Automobile Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$4,000,000 per occurrence for bodily injury and property damage or split limits of at least \$2,000,000 for bodily injury per person per occurrence and \$2,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Contractor or its employees.

Subcontractor: In the case of any work sublet, the Contractor shall require subcontractor and independent contractors working under the direction of either the Contractor or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Contractor.

Qualifying Insurance: The insurance required by this Agreement shall be written by a non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Contractor shall secure the following for the benefit of the City with respect to the above required insurance, so that the City shall:

- Be identified as an additional insured on all policies except Worker Compensation Policy;
- Be provided with thirty-(30) days advance notice in writing of cancellation in any policy;
- Be provided with Certificates of Insurance evidencing the above required insurance pursuant to this Agreement, and thereafter with certificates evidencing renewals or replacement of said policies of insurance; and
- Be provided with waiver of Subrogation on Workers Compensation in favor of the City.

SECTION 12. PERFORMANCE SECURITY.

During the term of this Agreement and any extension thereof, the Contractor agrees to procure and maintain a performance bond (i) payable to the City, (ii) issued by a surety acceptable to the City, and (iii) conditioned upon the Contractor truly and timely performing all of its obligations under this Agreement. Such performance bond shall be in the amount of \$ _____ (a minimum of 100% of the first year value of the Agreement) and shall be in effect for the duration of this Agreement and any extensions thereof.

SECTION 13. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any materials not covered under this Agreement; provided, however, that the Contractor and the owner or occupant of a Residential Unit may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of any such materials.

SECTION 14. ASSIGNMENT.

This Agreement shall not be assignable or otherwise transferable by the Contractor without the prior written consent of the City; provided, however, that the Contractor may assign this Agreement to any direct or indirect affiliate or subsidiary of the Contractor or to any person or entity succeeding to all or substantially all of the Contractor's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent.

SECTION 15. ENFORCEMENT.

The City shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein.

SECTION 16. COMPLIANCE WITH APPLICABLE LAWS.

The Contractor shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of Residential Garbage and Refuse, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the City that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the City's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The City shall have the right to make reasonable inspections of the Contractor in order to insure compliance with this Section.

SECTION 17. DUE CARE.

The Contractor shall exercise due care and caution in providing the Services so that the City's public and private property, including streets and parking areas, will be protected and preserved.

SECTION 18. PERSONNEL AND PERFORMANCE STANDARDS.

The Contractor shall not deny employment to any person on the basis of race, creed or religion, and will insure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Contractor, its agents, servants and employees shall perform the Services in a courteous and competent manner. During the term of this Agreement and any extension thereof, the Contractor shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

SECTION 19. TERMINATION.

Any failure by the Contractor or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the City (and signed by the Mayor), constitute grounds for forfeiture and immediate termination of all the Contractor's rights under this Agreement, and all such rights shall become null and void.

City may terminate the Agreement at any time, without cause, upon providing Contractor 180 day's written notice of its intent to terminate.

SECTION 20. INDEMNITY.

THE CONTRACTOR ASSUMES RISKS OF LOSS OR INJURY TO PROPERTY OR PERSONS TO THE EXTENT CAUSED BY ITS PERFORMANCE OF THE SERVICES. THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS AGENTS, DIRECTORS, EMPLOYEES, OFFICERS AND SERVANTS FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES, LOSSES OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) TO THE EXTENT CAUSED BY AN INTENTIONAL, WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS AND EMPLOYEES. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT OR OTHERWISE, CONTRACTOR SHALL HAVE NO OBLIGATION TO INDEMNIFY, DEFEND OR HOLD HARMLESS CITY, OR ANY OTHER PARTIES INDEMNIFIED UNDER THIS AGREEMENT, FOR ANY SUCH

LIABILITY OR CLAIM TO THE EXTENT RESULTING FROM THE NEGLIGENCE OR, WILLFUL MISCONDUCT BY CITY, ANY THIRD PARTY OR ANY OTHER PARTIES INDEMNIFIED UNDER THIS AGREEMENT.

SECTION 21. INDEPENDENT CONTRACTOR.

Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.

SECTION 22. FORCE MAJEURE.

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

SECTION 23. GOVERNING LAW.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas, County of Kendall and the Federal courts of the United States located in the State of Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may be enforced in or by said courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Texas State or Federal court.

SECTION 24. CUMULATIVE REMEDIES.

Pursuit of the remedies described in herein shall not preclude pursuit of any other remedies provided in this Agreement or any other remedies provided by law, nor shall pursuit of any remedy provided in this Agreement constitute a waiver of any amount or performance due from the Contractor under this Agreement or of any damages accruing by reason of the violation of its term, provisions and covenants. No waiver of any violations shall be deemed or construed to constitute a waiver of any other violation or other breach of any the terms, provisions and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies as provided on an event of default shall not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

SECTION 25. SAVINGS PROVISION.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible,

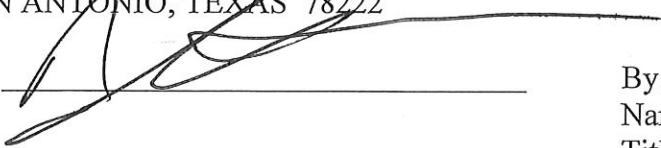
remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 26. ACCEPTANCE.

PASSED AND APPROVED BY THE CITY OF FAIR OAKS RANCH CITY COUNCIL MEETING AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 17th DAY OF AUGUST, 2017.

BFI WASTE SERVICES OF TEXAS, LP
d/b/a ALLIED WASTE SERVICES OF S.A.
//REPUBLIC SERVICES OF SAN ANTONIO
4542 SE LOOP 410
SAN ANTONIO, TEXAS 78222

By: _____



ATTEST:

By: _____


Name: TOM ARMSTRONG
Title: MUNICIPAL SALES MGR

CITY OF FAIR OAKS RANCH, TEXAS
7286 DIETZ ELKHORN
FAIR OAKS RANCH, TX 78015

By: _____



Name: Tobin Maples
Title: City Manager

ATTEST:

By: _____



Name:
Title: